

DOCKET NO.: WYTH0015-100 (AM100961 US)

PATENT

## REMARKS

As discussed in the telephone conference, the Declaration submitted with Applicants' prior response establishes that the subject matter disclosed but not claimed in U.S. Patent Application Publication No. US 2003/0166627 A1 (referred to in the Declaration as U.S. application serial number 10/348,510), and relied upon by the Office in the present rejection, was in fact conceived by Dr. Megati, Dr. Vid, and the other inventors of the present application, and that the other inventors of the cited reference (Dr. Harris, Dr. Keith, Dr. Albert, and Dr. Miller) were not co-inventors of the subject matter relied upon by the Office in the rejection. Accordingly, the Declaration as submitted is sufficient to remove the reference as prior art. See *In re DeBaun*, 687 F.2d 459, 214 USPQ 933 (CCPA 1982).<sup>1</sup> Applicants therefore respectfully request reconsideration of the Declaration, and the present rejection. The Examiner is cordially invited to contact Applicants' undersigned representative at (215) 665-5548 if there are any questions regarding this paper.

In view of the foregoing, Applicants submit that claims 1-12 are in condition for allowance, and an early notice of the same is earnestly solicited.

Respectfully submitted,



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<sup>1</sup> As was also discussed, although Applicants' Declaration did not indicate whether it was submitted under 37 C.F.R. § 1.131 or §1.132, MPEP section 715(01)(a) states that such a Declaration submitted under 37 C.F.R. § 1.131 be considered as if submitted under 1.132. See *In re Facius*, 408 F.2d 1396, 161 USPQ 294 (CCPA 1969). Accordingly, Applicants believe that reconsideration of the Declaration as if submitted under §1.132 to be proper.